EUGENE ILLOVSKY (CA SBN 117892)
eugene@illovskylaw.com
ILLOVSKY LAW OFFICE
1611 Telegraph Avenue, Suite 806
Oakland, California 94612
Telephone: 510.394.5885

Attorney for Respondent
PUNEET CHAWLA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CITRIX SYSTEMS, INC., Plaintiff, v. WORKSPOT, INC., Defendant.	Case No. Misc. 19-80054 EDL **RESPONDENT PUNEET CHAWLA'S OPPOSITION TO MOTION TO COMPEL PRODUCTION OF DOCUMENTS** CTRM: Hon. Elizabeth D. Laporte DATE: TBD TIME: TBD

Respondent Puneet Chawla hereby submits the following memorandum in opposition to the motion to compel filed by plantiff Citrix Systems, Inc. ("Citrix"):

I. INTRODUCTION

Citrix seeks to use an overly broad subpoena arising out of satellite litigation in the underlying Delaware case to inspect all of the personal devices – phones, tablets, laptops, desktops – used by Mr. Chawla (a former employee of defendant Workspot) to "send email and/or browse the internet." Motion, p.1. Citrix is looking for some sort of evidence to support not its complaint but rather a sanctions motion in Delaware federal court against defendant Workspot. Citrix has not identified the specific personal device of Mr. Chawla's it seeks to inspect (much less explained

why that particular device should be inspected). Instead it contends that its subpoena need not identify any particular device.

Citrix does not carry its burden under the Federal Rules of Civil Procedure or the Local Rule. It fails to make the case that it should be allowed to inflict an overly broad and intrusive subpoena on a non-party in service of an ill-defined hunt for evidence to support a sanctions motion in its lawsuit. The motion to compel should be denied.

II. FACTUAL BACKGROUND

The Lawsuit. On April 19, 2018, Citrix sued Workspot, Inc. ("Workspot") in Delaware federal court. The companies compete in various cloud-related services, including desktop virtualization. Citrix asserts four claims that new entrant Workspot infringed patents relating to virtual machines and remote access, one claim that Workspot violated the Lanham Act, a claim that it violated Delaware's Deceptive Trade Practices Act, and one for common law unfair competition. Workspot, the much smaller company, denies the allegations; on December 17, 2018, the Delaware Court denied Citrix's motion for a preliminary injunction.

The Delaware case, like most patent litigation between competitors, is hotly contested. Satellite litigation has sprung up around alleged protective violations by Workspot and assertions that someone from Workspot anonymously sent improper emails to Citrix executives and posted uncomplimentary messages at certain websites. The subpoena to Mr. Chawla has nothing to do with the merits of the claims in the Complaint or defenses in the Answer, but rather emerges from these ancillary skirmishes.[1]

As Citrix notes, the Delaware Court held a hearing on December 12, 2018 at which it discussed the emails and after which it awarded sanctions to Citrix to be paid by Workspot. Mr. Chawla, who had been employed by Workspot, was terminated by the company soon after the hearing. The following January, Mr. Chawla was served with the subpoena at issue on this motion (as well as a subpoena for his deposition).

[1] Mr. Chawla was deposed once while still employed by Workspot. Workspot's counsel indicated to Mr. Chawla's counsel that it does not intend to call him as a trial witness.

The Subpoena and Response. On or about January 11, 2019, Citrix served a subpoena with 15 broad document requests plus a demand to inspect Devices in Mr. Chawla's possession, custody, or control, during a period in October 2018.[2] Citrix subpoena defines "Devices" extremely broadly as "any electronic equipment that has the capability of sending or receiving electronic communications, including but not limited to, mobile phones, tablets, desktop computers, or laptop computers."

By letter dated January 24, 2019, Mr. Chawla provided responses and objections to the subpoena. With respect to the demand to inspect all of his personal "devices," among other objections, he noted the demand did not seek information relevant to a claim or defense in the Delaware case and that the definition of "device" was overly broad because it covered every device in Mr. Chawla's possession, custody, or control. *See* Exhibit 6 to Strapp Declaration.

Mr. Chawla also conducted a search for responsive documents as to the other 15 document requests. He produced what he found. Citrix complains, without basis, that he did not produce much, though Mr. Chawla made clear that when he left Workspot's employ he returned company property.

Counsel for Mr. Chawla and Citrix met and conferred about the inspection demand but reached an impasse over whether Citrix had shown relevance and whether it had to identify the specific devices that it wants to inspect. This motion followed.

III. LEGAL ARGUMENT

Citrix wants to examine Mr. Chawla's *personal* devices – devices he owns and that he or others in his family may have used while at home. Citrix contends it needn't identify which specific devices.

Given the extraordinarily intrusive and overbroad nature of its request, Citrix does not make the expected strong showing – indeed, *any* showing – that its subpoena seeks information that is relevant to a party's claim or defense, proportional to the needs of its case, and not

[2] Civil L.R. 37-2 says "a motion to compel further responses to discovery requests must set forth each request in full, followed immediately by the objections and/or responses thereto." Citrix's motion did not do that, so we refer the Court to Attachment B to the subpoena in Exhibit 9 of the Declaration of Michael Strapp submitted in support of Citrix's motion ("Strapp Declaration").

cumulative of information already established. And, even if it could show relevance and proportionality, Citrix does not adequately support its position that it can demand to inspect any personal "device" that Mr. Chawla used to "browse the internet" without specifically identifying that personal device. A Rule 45 subpoena is not a general warrant to rummage through a non-party's laptops, desktops, tablets, and phones.

A. Citrix's Non-Party Subpoena Does Not Meet Rule 26's Requirements

A Rule 45 subpoena may direct a non-party to "produce . . . tangible things in that person's possession, custody or control." As noted above, the "tangible things" Citrix seeks to inspect are Devices in Mr. Chawla's possession, custody, or control, during a period in October 2018, defined as "any electronic equipment that has the capability of sending or receiving electronic communications, including but not limited to, mobile phones, tablets, desktop computers, or laptop computers."

It is Citrix's burden to "establish[] that the information requested is within the scope of permissible discovery." *Boston Sci. Corp. v. Lee*, 2014 U.S. Dist. LEXIS 107584 at *12 (N.D. Cal. Aug. 4, 2014). *See* Rule 26(b)(2)(C)(iii). Permissible discovery is strictly limited to "any nonprivileged matter" Citrix can show is "relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). Two of the main considerations are "the importance of the discovery in resolving the issues" pertaining to those claims or defenses and "whether the burden or expense of the proposed discovery outweighs its likely benefit." *Id.*

Accordingly, Civil L.R. 37-2 requires that Citrix's "moving papers must detail the basis for [its] contention that it is entitled to the requested discovery and must show how the proportionality and other requirements of Fed. R. Civ. P. 26(b)(2) are satisfied." Citrix's moving papers do not establish proportionality or meet the other requirements of Rule 26(b)(2).[3]

1. <u>The Information Sought is Not Relevant to a "Claim or Defense"</u>

Citrix is upfront about why it seeks to inspect Mr. Chawla's personal devices: it is searching for evidence of "harassing emails and threatening internet posts" to support a motion for

[3] Citrix's moving papers do not show, for instance, the evidence sought is not "unreasonably cumulative or duplicative." Rule 26(b)(2)(C)(i).

additional sanctions against Mr. Chawla's former employer Workspot. Citrix claims the federal court in Delaware "permitted Citrix to seek [limited] expedited discovery regarding Chawla's threatening emails, internet posts and false declaration."[4] Motion p. 6. Though there is no indication such "limited" discovery allowed by that Court contemplates the intrusive discovery sought here.

But Citrix ignores the rule of relevance. Information sought for a satellite sanctions motion is not the same as information "relevant to [a] party's claim or defense" under Rule 26(b)(1). As stated above, the complaint asserts patent infringement, false advertising, deceptive trade practices and unfair competition. The sanctions motion is not pertinent to those claims or defenses, therefore Mr. Chawla's personal devices are not within the scope of permissible discovery defined by the rules. Even if, as Citrix asserts, the discovery sought from Mr. Chawla were "relevant to the issue [Delaware] Judge Stark specifically identified," Motion, p. 10, that does not make it relevant to a *claim or defense* in the pleadings. The federal court in Delaware may have permitted "limited discovery" for the sanctions motion, but it did not rewrite the relevance test of Rules 26 and 45.

2. The Burden of the Discovery Sought Outweighs Its Benefit to the Case

Because Mr. Chawla's personal devices are not evidence pertinent to a claim or defense – and Citrix does not argue to the contrary – the discovery sought is necessarily not "proportional to the needs of the case."

Let's briefly put aside the lack of relevance. Taking Citrix at its word, the discovery sought is at best cumulative or duplicative and not needed by Citrix. Citrix insists it has done an "extensive investigation" by which it says it has already determined that Mr. Chawla "sent harassing emails to Citrix executives and posted inflammatory and false statements on the Internet." Motion, p. 10. If that is the case, then any additional evidence it gets from examining Mr. Chawla's personal devices will be cumulative; in any event, Citrix surely does not carry the burden of showing it will *not* be unreasonably cumulative or duplicative, as Civ. L.R. 37-2 and

[4] Citrix cites to a party's characterization of the supposedly false declaration, but does not submit the actual declaration in its moving papers.

Rule 26(b)(2)(C)(i) require. Since the discovery will, on Citrix's own terms, almost certainly be cumulative and not proportional to the needs of the case, "the burden or expense of the proposed discovery outweighs its likely benefit." *Nalco Co. v. Turner Designs, Inc.*, 2014 U.S. Dist. LEXIS 45669 at *4 (N.D. Cal. Mar. 31, 2014).

Citrix insists it will find things like pertinent "emails, texts, and other correspondence." Motion, p. 11. This is speculation in any event; Citrix does not explain what else it might find given that it has already made a determination based on its self-described "extensive investigation." Moreover, Citrix has already asked for such documents in Mr. Chawla's possession and Mr. Chawla has indicated that he searched for such materials. Citrix offers no legal authority for the proposition that its bare assertions that a subpoena recipient did not do a good-enough search or destroyed evidence allows it to get its hands on that person's personal devices.

Although Citrix relies on *Advante Int'l Corp. v. Mintel Learning Tech.*, 2006 U.S. Dist. LEXIS 86334 (N.D. Cal. Nov. 21, 2006), Motion, pp. 10-11, that case does much more to support Mr. Chawla. First, *Advante* (unlike this case) involved not satellite litigation but a discovery dispute between parties over materials relevant to a claim or defense.[5] Second, the party seeking to inspect the hard drive established "serious questions" about the "reliability and completeness of materials produced" by its opponent, such as "altered" emails that "served to downplay or even conceal" a key relationship in the case. *Id.* at *3. There is no "serious issue" about alteration of relevant evidence raised by Citrix here. Indeed, the *Advante* Court's statement from its denial of the first iteration of that motion to compel is more pertinent to Citrix: "a party would not be entitled to inspect personally an opposing party's offices and filing cabinets simply because it believed that discovery misconduct had occurred . . .." *Advante Int'l Corp. v. Mintel Learning Tech.*, 2006 U.S. Dist. LEXIS 45859 at *2 (N.D. Cal. June 29, 2006).

[5] Also unpersuasive for the same reasons are Citrix's other cases that involve not non-party subpoenas but rather parties fighting over discovery that is directly relevant to a claim or defense. *E.g., Playboy Enters. v. Welles*, 60 F. Supp. 2d 1050 (S.D. Cal. 1999); *Antioch Co. v. Scrapbook Borders, Inc.*, 210 F.R.D. 645, 650-51 (D. Minn. 2002). Non-parties have extra protections; for instance, Rule 45(d)(1) requires a person issuing a subpoena "to avoid imposing undue burden or expense" on the recipient.

Nor is Citrix's extraordinary request supported by the very different case of *Dawes v. Corrections USA*, 263 F.R.D. 613, 619 (E.D. Cal. 2009). Motion, pp. 11-12. *Dawes* involved, again, a discovery dispute between parties over evidence directly (1) pertinent to a claim or defense (2) residing on a specifically identified laptop. 263 F.R.D. at 618 and n.6. The same goes for *Ukiah Auto Invs. v. Mitsubishi Motors of N. Am., Inc.*, 2006 U.S. Dist. LEXIS 33352 at *11-12 (N.D. Cal. May 17, 2006), which was a discovery dispute between parties over evidence (1) pertinent to a claim or defense (2) residing on a specifically identified "ADP computer."

B. Citrix's Non-Party Subpoena Does Not Meet Rule 45's Requirements

The requirement of Rule 34(b) that an item to be inspected be "describe[d] with reasonable particularity" applies to a non-party subpoena, no doubt to ensure the subpoenaed person is not subjected to "undue burden or expense." Rule 45(d)(1). As we showed above, Citrix's request is overly broad because it fails to describe with any particularity the device it wants to search.[6]

Citrix has cited no case where a court compelled a non-party to submit to the extraordinary demand it makes. In *Boston Scientific Corp. v. Lee*, 2014 U.S. Dist. LEXIS 107584 at *19-20 (N.D. Cal. August 4, 2014), the Court refused the "highly invasive" request of taking forensic images from devices, even though the non-party's devices were (1) assigned to its employee for *business* use and thus tied to the case (2) were specifically identified (two laptops). *Id.* at *15-16.

IV. CONCLUSION

Citrix's mere assertion that Mr. Chawla's "personal computing devices are . . . likely" to contain materials pertinent to a satellite issue being litigated in Delaware should not be enough to let it bend the rules of relevance or justify this intrusive and overly broad subpoena. Citrix fails to

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[6] During the meet-and-confer, Mr. Chawla's counsel urged "if there is a particular device whose forensic image Citrix has reason to believe it should be able to inspect, it should describe what that device is and articulate what it expects to find on that forensic image that is relevant to a party's claim or defense." *See* Exhibit D to Strapp Declaration. His counsel later asked Citrix again to "identify those things" specifically that it sought to inspect or provide legal authority supporting the view that it didn't have to. *See* Exhibit E to Strapp Declaration.

carry its burden of showing it is entitled to such extraordinary relief. The motion to compel should therefore be denied.

Dated: March 15, 2019

Respectfully submitted,

EUGENE ILLOVSKY
ILLOVSKY LAW OFFICE

By: ___*/s/ Eugene Illovsky*____
EUGENE ILLOVSKY
Attorney for Respondent
PUNEET CHAWLA